

Draft

PRE-TRANSITION AND TRANSITION ROOTS OF CORRUPTION IN HUNGARY

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Introduction

While conducting this essay, the following commonly accepted scientific facts¹ were taken into account:

- ? the notion of corruption, what it means to the public and how it is embedded in society keeps changing as time passes within a particular culture, and naturally these changes are followed by changes in the legal system, namely within the field of terminology, judicial practice, sanctions and terms and their reasons adduced,
- ? corruption, as the negative segment of social, economic, and political life, has existed since time immemorial as an integral part of various cultures and constitutional forms,
- ? corruption is not an exclusively Hungarian phenomenon,
- ? in the world of globalization, corruption knows no borders, it has assumed international dimensions and presumes international relations,
- ? the efficiency of anti-corruption campaigns is usually rather poor, and it is only international cooperation - which is becoming a common practice today - that has any potential for bringing about a positive change,
- ? working out the details of fighting corruption in Hungary is still ahead of us, it is jurisdiction that is at the most advanced stage at the moment.

1. Nature and development rules of corruption in general

One of my favourite example to illustrate the essence of corruption is the "golden apple case" taken from Greek mythology. The example shows the role of several active bribing parties linked to the passive offender. Agreeing with one of the well-known Hungarian author² of corruption categories, corruption can only appear where there is tension and contradiction in any of the social and economic conditions. Corruption is intended to recreate the correct balance in its rather peculiar form ...with more or less success.

Several distinctions have to be made for defining corruption. First we have to make a **distinction between the different forms of appearance of corruption** - that is

- ? the general,
- ? the special and
- ? the unique level.

In general level of the form of appearance: corruption is a permanently changing social phenomenon, a historical-social product/category in terms of socio-economic environment, of its characteristic relationships, its time-horizon defined by the rate and speed of changes. Similarly to criminology corruption is a mirror of the society's basic inconsistencies actively deforming it using the lack of social-economic integrity system. I would say, each country has her corruption which one she has deserved.

The corruption as a mass-phenomenon has all those characteristics the social mass-phenomena have, effecting at the same time mainly in the distribution system of the society by forming-deforming it. So the **basic criterion of corruption** is its secondary distribution character preventing the planned distribution of goods in terms of

¹ Dr. Iván Münnich: Corruption research, National Institution of Criminology, Budapest, 2000

² Dr. Mariann Kránitz: Corruption (In: Criminological Issues, Crime, Crime-control. Ed.: K. Gönczöl – L. Korinek – M. Lévy), Corvina, Budapest, 1996

- ? size,
- ? method or the
- ? circle of preferred.

Another important criterion of corruption is its similar role in distribution-redistribution of the non-material system. It does mean that the corruption on one hand is realized mainly in economic relations but it is effecting at the same time the restructuring of social relations in different fields: moral-ethics, culture, science, ideology, policy family etc both on macro and micro level.

In special (individual) level the characteristics of basic corruption situation are the following:

- ? an interpersonal relationship of minimum two persons,
- ? there is a (changing) subordination of one of the parties in the given situation,
- ? an effective cooperation of the parties has to be supposed by special rules and
- ? a tie of conspiracies is to prevent the relationship to reveal it and maximizing the mutual advantages of the parties.

Social harm of the before described phenomenon is in potential widening and deepening of the successful system of connection with changing roles of the parties.

The unique level of corruption – among mass and individual ones – is characterized by the circle of the subjects in a special position to be corrupted and bridging the previous levels. This positions you can find first of all in the following fields: judgment, punishing institutions, police, political institutions but also in sport etc.

Immanent development rules of corruption are :

- ? chain-reaction in spreading,
- ? widening reproduction,
- ? ability of flexible adaptation and
- ? high latencies.

Distinction has to be made also between corruption as a general social phenomenon and as a penal law phenomenon.

Relating to the former analysis of general and individual level of appearance forms, corruption is mass-phenomenon and social relation. Demonstrating the key morphological characteristics of corruption crimes we are witnessing that ever since the early phases of the development of law certain states have regarded corruption a penal law phenomenon and from time to time they have sanctioned particular aspects of corruption, but never the whole of it.

It seems to be a historical legislation rule that only parts of corruption are emphasized and made a target of penal law of the time. These segments are at times small and at times large, but no matter how small it is at times, its significance can never be overlooked. It means that the mentioned aspects of corruption have already surpassed the limit beyond which something is considered a threat to society, as determined by the penal law of the time.

Relating to the penal law: as a case of corruption, the following offences are listed as a crime against the clean morals of public life: bribery of officials, economic bribery, fraudulent misuse of funds, influence peddling.

On the basis of the Hungarian figures we should note that examining statistical data relating to corruption crime is not really of informative character because of the very small number of the sample (about 800 revealed cases/year in the '90s as an average).

In the last 40 years (1960-2000) the dynamics of statistical data relating to corruption crime is rather tragicomic character and far from the realities of life in Hungary. Share of revealed corruption crimes in all revealed crimes has remained below 1%! Furthermore since 1980 – from when the total sum of crimes has started to grow permanently and has reached a sum of almost 3,5-4 times of the former period – the share of corruption crime has been slightly decreased.

In order to understand the before mentioned data we should reveal the roots and main trends of corruption in the second half of the 20th century Hungary.

2. Roots and main trends of corruption in Hungary in the second half of the 20th century, in the party-state and after the change in political regime

Examining the reasons and consequences of the appearance of forms of domestic corruption it can be stated that the higher level of civilization, the development of the economy, and the development of more and more complicated social structures do not impede or possibly reduce corruption, but on the contrary they encourage its growth and the appearance of newer and newer forms and mutations.

Rather frequent and great socio-economic and ideological changes in the history of a country will also not help the moral approach in opinions and sentences of the society relating to corruption. Furthermore the lack of democracy and its institution is also not a definite help to force the public opinion in increasing the relevant moral standards.

2.1 Main reasons generating corruption forms in the socialist system in Hungary

Inherited traditions and patterns of behaviour

It is well-known that the Hungarian society had a very limited time for learning special rules from feudalism to socialism. The ruling elite could not forget the advantages of nepotism and thanking to the economic and political results of the World Wars I and II – all together in more or less 20 years of peace – the corrupt actions has been time to time sanctioned and tolerate, more over helped in enlargement by incorrect decisions.

The new challenges relating to the changes of regime into the soviet-oriented power communist-type regime strengthen the so called “contact-capital system” in all terms: at the newly emerging class and in the deteriorated/devaluated position of the former elite.

Corruption created to satisfy demands of the economy of shortage

The nature of shortage economy by the help of its rigid contemplation of economic plans necessarily corrupted millions of people trying to establish their every day life. The decision-maker persons in position of sellers, producers, entrepreneurs, traders, service people etc. could live on tipping, gratuities, favouritism and there was a wide range of benefits granted them for their “services”.

An average Hungarian citizen had to maintain a well developed chain of regular tipping, gratuity, connections to meet the those potential sources which could help him/her to guarantee the basic needs of the family.

Process in which the private functions became public services

As a result of the rigid centralization in numerous segments of the life the private functions became public services. This process have reached services as a whole, infrastructures and also the culture, education and health service.

I would say the necessity of corrupt actions were centrally established in the every day life of the society in order to make the system operate. From hairdressers to physicians the public service character of their activity through nationalization of the whole economy has formed a special interest enforcing mechanism on the buyers’ side manifested as tipping, gratuity etc.

The lack of a market economy and the officially low salaries in the service sector (calculating with tipping and gratuity) established a long time effecting corruption process.

Corrupt behaviour of the ruling elite

There was a fundamental characteristic of selecting leaders in every area of life dominated by politically motivated selection (so-called contra-selection preferring political obligation against professional competence). On the basis of the previous method of selection the system of mutual indebtedness easily came into being. This white collar corruption mechanism had a practice of really “artistic character”.

The primary venue of this was the bargaining mechanism operating at various levels of the state and party governance, in institutional and informal ways.

This means of enforcement of interests adjusted to the bargaining mechanism (personal acquaintance, hunting parties, the granting of mutual favours etc.) were regarded as inherent elements of the system and, with the exception of a few flagrant cases, they were tacitly accepted. The phenomena of corruption and the combating thereof came into the focus of the “official attention” only in the other spheres of the social and economic life, primarily in the areas relating to the lifestyles of the citizens and to the satisfaction of their day-to-day needs.

The investigation and sanctioning acts of corruption – well known for being restricted anyway – were also often hindered by party political consideration.

Paternalistic character of state

The essence of paternalistic state in terms of corruption we can derive from total centralization, over-dimension of state administration' functions, unification and/or confusion of different state functions such as proprietor and public power.

Among all causes of corruption the deficiencies of the operation of the state governing organizations has been the dominant factor. The lack of legal regulation, the bureaucratic proceedings, poor controls and a low-level financial and moral rewarding of staff further aggravated the problems arising from the economy of shortage.

There was a "Janus face" of the paternalistic state generating antagonistic conflicts of interests through its bureaucratic proceedings on one hand and declaring slogans of anticorruption measures on the other.

From the end of the eighties on we can observe the changes of corruption appearing or multiplying in the transition period starting with the change of regime.

2.2 Characteristics of corruption in Hungary during the transitional period of building a market economy

As it was emphasized before, fundamental socio-economic and ideological changes of the regime are not helping the countries in effective combating against corruption. Furthermore the phenomenon itself also has been changed in the transition countries in its quality and widening appearance.

Since 1990 the Hungarian society has been living in an age of rapid social and economic changes, implementing a transition

- ? from the single party system into a multi-party one,
- ? from the party rule to the rule of law,
- ? from centrally planned economy to a market economy and
- ? a radical transformation of the economic and ownership structure.

The partial "dismantling" and reorganization of the previous state apparatus and development of a democratic institution system fundamentally was operating against corruption, despite interim uncertainties.

The main "genetic junctions" of corruption were/are as to be followed.

Inherited traditions and patterns of behaviour

There is a continues existence of old types of corrupt behaviour after the disappearance of the phenomena of conditions existing in and produced by socialism.

It can be explained by inherited conscious paradigms of the people and also of institution system (operated by them). Patterns of behaviour of the newly established and/or reorganized institutions have a similar long lasting characteristics of change in the conscious development as described before.

There is a special uncertainty of the population based on the former lack of a market economy and officially low salaries in the service sector (calculating with tipping and gratuity) up to the present time. Therefore obligation of tipping in case of given services (hairdresser, taxi-driver) and gratuity to physicians are not clean phenomena in the developing Hungarian market economy up to now.

Period of transformation

It is also well known that great changes in socio-economic systems (wars, revolutions with or without blood) are both strengthen and fasten the potential harm of corruption because of the following:

- ? introduction of new corruption targets in connection of keeping, gaining or regaining the power,
- ? possibility of “fishing in troubled water” in a partial legal and economic public order and
- ? other important preferences of rule making in the early stage of transformation.

Owing to the urgency of the tasks, new laws and other types of statutes have been almost mass produced in the early nineties, coming out in a rapid flow, containing innumerable loopholes, internal contradictions.

Naturally all these circumstances, practically unavoidable deficiencies and disharmonies, the uncertainties of the state organs – partly related to the quality of legislation – have opened up a wide area for the obtaining of illegal advantages and incomes also in Hungary with the help of targeted corruption.

Privatisation – establishing an emerging new segment of the owners

However the first phase of the privatisation of the state property (in the so-called spontaneous privatisation phase from 1989 to 1991) was launched without a concept clarifying the fundamental questions and the necessary institutional and regulation conditions the Hungarian privatisation was more or less controlled.

There were some specialties in the Hungarian privatisation of the state property compared to the majority of the transitional countries of the CEE:

- ? It was the operating enterprise the subject to be privatised and in order of further operation the new owner had an obligation to buy as a minimum rate 50%+1 vote of the property. This method of privatisation was fundamentally different from the practice of the other CEE countries where the forms of voucher or MRP mass-privatisation have taken priorities. In the Hungarian model of privatisation the new owner also inherited all former obligations (debts, guarantees) and competences (licenses, agreements) of the property bought.
- ? In most cases the new owners were outsider investors not belonging to the management of the companies. Therefore it was a quite common method of the outsider investors to give different benefits for the former management in the privatisation process in order to take them to their side. This special transfer of

incomes after all have decreased the whole state income originated from the privatisation.

- ? There was also more or less common the obligatory competition in course of privatising enterprises, real-estates, rights relating to properties etc. It is true that not in all but in most of the cases there were the prices the decisive elements in the privatisation of the state property in Hungary.
- ? The Hungarian privatisation was strongly centralized through the direction of organization situated in the capital and the income of the privatisation came directly/indirectly into the central budget.

What could be the main findings of both the above mentioned special conditions relating to corruption and the entire privatisation process:

- ? In the first phase of the privatisation process (first of all in the phase of the spontaneous privatisation) the rule of law was quite poor.
- ? There were also some loopholes in operation of the State Property Agency (SPA) in terms of the transparency and accountability of the competition.
- ? In the tendering system (in the process of bidding, evaluation and granting) there was an overruling effect in order to excluding and/or minimizing the subjective elements in course of the process. Naturally the most complete scoring itself could not exclude the subjective elements.
- ? It could be stated that decision makers (above all in the early and mid-nineties) of the privatisation process at the SPA personally could not get rid off the some conflicts of interests (both relating to the shortage of professionals and that of the confidence).
- ? Relating to the statements of different reports of the State Audit Office (SAO) one of the main problems of the privatisation process from 1989 to the mid-nineties could be summarized as the lack of the regular and efficient external professional controls and a poor efficiency of the built-in internal controls

Effects of the international corruption

One of the greatest challenges of the last decades of the twenties century was the fact that corruption crossed the national borders and became a world phenomenon. Its close contacts with the organized crime have created the corruption to become an effective weapon. Relating to the practice of organized crime, in order to meet their interests, it is ready to kill or propose different deals of corruption. The latter solution seems to be more efficient and appropriate to reach the goal.

Effects of international corruption we could witness through some single actions in case of trading with some so-called ABC or fiscal products (alcohol, oil, café etc.), in the phase of the spontaneous privatisation and in course of the state consolidation of banks.

Relating to the information of media the multinational corruption had also effect on the privatisation process and in course of the foreign direct investments in Hungary. Naturally this “imported approach” could only develop on the basis of existing willingness at the Hungarian partners. Therefore some modifications in the Penal Code were already made and new laws (e.g. to prevent money laundering the Law XXIV. in 1994) were introduced in the first half of the nineties.

The methods of the large foreign companies in case of public procurement are usually more sophisticated. They invite the decision-makers to conferences and shows abroad, to factory and reference visits. Since the usefulness of these may even be justified partially, one's bad conscience may be kept asleep. In some instances, we have the case or suspicion of targeted tenders. This happens when the tender document sets a condition which only a single company, a single bidder satisfies (characteristic for some products of information and communication technology).

Public procurement and corruption³

Public procurement is one of the activities which entail the greatest temptation of corruption. The reason for this being that in the course of public procurement often rather large amounts are being spent, while those who make the decisions are not spending their own money. The public procurement processes are rather complicated, and there are therefore various ways to manipulate them. There are a number of ways to corrupt the public procurement process in the various stages of the procedure. These include the manipulation of the conditions and information in a way which favours certain suppliers, e.g. issue of orders without inviting bids, etc.

- ? One of the simplest solutions is if the supplier intended to be favoured is furnished with information which the competitors have no access to. It also often happens that the compilation of the conditions is already based on the conditions defined by a particular supplier which constitute the basic consideration for assessment, and the others are thereby excluded from the competition.
- ? There is also plenty of scope for manipulation in the course of the assessment of the bids. This results in an invitation to tender which does not define the considerations for assessment clearly, and thereby allows scope for subjective decisions.
- ? In the implementation phase, the procedural rules set almost no limit to corrupt manipulation. The customer has the possibility not to require compliance with the conditions stipulated in the contract, and to seek various benefits in exchange for this.

Corruption may take many different forms. These include the granting of various gifts (valuable objects, holidays abroad, etc.). It is a less obvious but efficient method of corruption if an officer in charge of public procurement, who makes the decisions, is employed after his or her retirement by the company which he or she was in contact with within the framework of public procurement. It is obviously impossible to completely avoid the acceptance of gifts, and nor is it absolutely necessary. The granting of gifts does not necessarily constitute corruption since it may also be a mere manifestation of courtesy. It is therefore a frequently used method that the values, in excess of which the acceptance of a gift must be reported, is determined in cash for the employees working in the different areas.

³ Based on the chapter: Nature of corruption in the public procurement (In: Accessibility and Transparency of the Public Procurement Process in Hungary, Albania and the Slovak Republic. Foundation for Market Economy - Albanian Center for Economic Research - Center for Economic Development, Budapest - Tirana - Bratislava, 1998)

Practically everyone agrees that since the coming into force of the Public Procurement Act, (January 1, 1996) there have been fewer transactions suspicious of corruption in Hungary. However, government and independent experts continue to find public procurement the most dangerous area of state administration from the respect of corruption⁴. (According to a 1997 investigation of the State Audit Office, a considerable part of the public procurement procedures were irregular.)

Local governments are the main customers of the public procurement market since so far more than 40% of the parties inviting tenders have been municipalities or their institutions. Their share in the amounts spent is also similar. Their most characteristic, prominent activities are construction, renovation and project works, and one third of the tenders invited by them relate to these areas.

In the opinion of the Council for Public Procurement (in 1997), in particular municipalities have abused the opportunity, offered by the Act, of conducting negotiation-based procedures instead of public procedures⁵. In the course of the construction works of large values, which take a longer period of time, there is plenty of room for bribing. The shadow of suspicion was often cast on health care projects which accounted for almost one half of the total municipality projects. The observance of the rules by the responsible institutions and their managers is questioned by the fact that various professional and other interest representations have attempted to prove on several occasions since the passage of the Public Procurement Act that the rules of public procurement were not applicable to health care.

Development of the Hungarian public procurement *in order to narrow the path of possible corruption efforts* will be the case of the next phase of our research activity.

⁴ Sources: Public procurement: where the state and private sectors come to do business. (Chapter title in the Manual of the international anti-corruption organization, Transparency International. Edited by Jeremy Pope, Berlin, 1996).

⁵Sources: the articles written by Katalin Bossányi in the daily Népszabadság: Corruption is also present in public procurement (August 12, 1997), The financial management of municipalities is, in fact, not controlled by anybody (November 4, 1997), and Open tenders are not popular (November 18, 1997).

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